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January 8, 2018

VIA ELECTRONIC FILING

Jocelyn G. Boyd, Esquire
 Chief Clerk & Administrator
 Public Service Commission of South Carolina

**RE: DIUC Rate Application Proceeding, Docket No. 2014-346-WS
 Response to Letter of John F. Beach on Behalf of the Intervenors**

Dear Ms. Boyd:

I write in response to Mr. Beach's letter dated January 5, 2018 (hereinafter "POAs' Letter") which raises two issues.

First, the POAs' Letter asserts without any basis that DIUC should have indefinitely delayed its Fourth Quarter 2017 billings thereby foregoing collection of 25% of its annual revenues. Second, the POAs' Letter asserts DIUC should not have issued refunds to its customers via its recent Fourth Quarter 2017 billing but that DIUC should have, instead, delayed issuance of these refunds until some as of yet unidentified time later in 2018, despite the fact that the bonds required by this Commission expired on December 31, 2017.

Thank you in advance for your consideration of this response. I realize it is lengthy, but DIUC takes very seriously the accusation of the POAs' Letter that DIUC has somehow engaged unlawful or improper action.

Procedural History – Appeal, Bonds, and Rehearing

Over two years ago, on June 9, 2015, DIUC filed the underlying Application seeking approval of a new schedule of rates and charges for water and sewer service that DIUC provides to customers within its authorized service area in South Carolina. The Commission entered Order 2015-846 approving a "settlement agreement" between the POAs and ORS. DIUC appealed the Order.

While the appeal was pending, DIUC elected to collect revenue as requested by its Application pursuant to S.C. Code 58-5-240. Following a written request for approval, the Commission approved DIUC's plan to implement its Application's rates

Section 58-5-240 provide[s] in part that if the Commission rejects a utility's application for rate relief, the utility may nevertheless choose to impose a rate increase while the utility seeks reconsideration by the Commission of the matter and/or appeal of the Commission's denial of rate relief before the Supreme Court of South Carolina, so long as the utility

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provides an appropriate surety bond in an amount sufficient to ensure repayment of any overcollection, with interest to be assessed at twelve percent per annum. The Commission is without discretion to prohibit the utility from imposing its proposed rates under an appropriate bond. The statute, as amended by the General Assembly in 1983, allows the utility to impose its proposed rates under bond as a matter of right where the utility demonstrates that the surety and the bond are sufficient to ensure that the ratepayers will be reimbursed with interest for overcharges in the event the utility's appeal is ultimately unsuccessful.

Commission Order 2016-156, March 1, 2016, at p.4. The Commission went on to find that DIUC's "proposed surety and the bond in the amount of \$787,867, effective July 1, 2016, for a period of one year are appropriate and are approved." *Id.* at p.5.

When the appeal continued beyond the one-year term of the bond issued pursuant to Order 2016-156, DIUC secured renewal of the existing bond and obtained a second bond in an amount sufficient to address the additional revenues to be collected. This time DIUC and the POAs negotiated then jointly proposed terms and amounts for the appeal bonds in a pleading captioned "Joint Request As To Appeal Bonds (DIUC and Intervenor)" and filed with the Commission on June 15, 2017. The Commission approved the Joint Request. Therefore, there are two Orders of the Commission related to DIUC's appeal bonds. They are Commission Order 2016-156 dated March 1, 2016, and Order 2017-402(A) dated June 30, 2017.

On July 26, 2017, the Supreme Court ruled Order 2015-846 "contained multiple adjustments which were entirely unsupported by the evidence presented to the Commission" and remanded the matter for new hearing. *Daufuskie Island Util. Co., Inc. v. S.C. Off. of Reg. Staff*, 803 S.E.2d 280, 286 (S.C. 2017).

The Necessity of a Hearing Prior to December 31, 2017

On October 4, 2017, DIUC filed Applicant's Proposal for Procedure Following Remand and Expedited Hearing. *See* DMS Entry #272433. In that Proposal, DIUC explained its position that the Supreme Court's Order did not require or authorize any additional discovery for the matters to be addressed on remand. *Id.* DIUC cited the high costs of the original proceeding and appeal as well as the mounting costs of the rate case following the appeal. Intervenor responded by asserting their entitlement to discovery without any limitation. *Id.* Standing Hearing Officer David Butler issued Orders 2017-59-H and 2017-60-H finding that "since the Commission will hold a new hearing on all ... issues, the Commission's discovery rules are clearly applicable."

On October 16, 2017, DIUC filed its Motion to Reconsider Directives 2017-59-H and 2017-60-H explaining to the Commission that a decision on the Application was necessary prior to the conclusion of 2017, because the bonds this Commission ordered so that DIUC could collect its requested rates pending appeal would expire on December 31, 2017. *See* DMS Entry #272662. DIUC also submitted the Affidavit of John F. Guastella affirming that DIUC would not be "able to renew its existing bonds or obtain additional bonds for rates charged after December 31, 2017." *See Id.* and *Exhibit C* thereto. The Affiant further testified that:

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[B]ecause of the impossibility of obtaining bonds and the threat to DIUC if it not allowed to collect rates greater than those allowed by Order 2015-846, DIUC requires this matter be set for hearing as soon as possible so that a decision could be issued by the Commission prior to December 31, 2017.”

Id. DIUC also immediately submitted its prefiled testimony. *See* DMS Entries #272729, #272730, and #272731.

In response to the Motion to Reconsider and DIUC’s prompt filing of its prefiled testimony, on October 23, 2017, Standing Hearing Officer Butler issued Order 2017-61-H revising the schedule for the specific purpose of allowing a hearing and decision of this Commission prior to December 31, 2017.

DIUC’s counsel stated a preference for the pre-filing of testimony, hearing, and issuance of an Order in this case before the end of 2017, based on the questionable ability of the Company to obtain a continuing appeal bond during any pendency of the remand after the end of 2017, and also the expense of said bond. [...] The Company has now filed the affidavit of John F. Guastella and other materials, which support the difficulties of continuing its appeal bond after the end of 2017, and various financial consequences associated with that effort. [...] [T]his Standing Hearing Officer believes that any ruling must be on the side of caution, and that all discovery, pre-filing of testimony, and the hearing should be accomplished as soon as possible, so that the Commission may have the opportunity to rule on this remanded matter prior to the end of 2017.

Order 2017-61-H, DMS Entry #272829.

Based upon the plain language of Order 2017-64-H, the hearing schedule in this matter was set for the sole purpose of allowing the Commission to enter a ruling prior to December 31, 2017, because on that date the bonds in place pursuant to Orders 2016-156 and 2017-402(A) for collection of DIUC’s applied-for rates would expire.

Pursuant to the Directive, a rehearing was held December 6-7, 2017. The parties provided proposed orders on December 15, 2017, so that the Commission would have them in advance of its scheduled December 20, 2017, meeting. *See* DMS Entries #273547, #273555, and #273556.

The Commission’s Decision on Rehearing and Instructions to DIUC

The Commission considered the rehearing during its December 20, 2017, meeting and pursuant to a motion by Commissioner Bockman, the Commission entered a Directive that requires DIUC to:

1. ... file a schedule with the Commission demonstrating that the rate design produces the revenue granted in the Order. These documents should be shared with the other parties in this case, who should verify that said rates are consistent with the provisions of this Order.
2. ... issue refunds, pursuant to S.C. Code Ann. Section 58-5-240, consisting of the difference between the amount allowed by this Order and the full amount originally requested by the

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Company, along with 12% interest. These amounts must be calculated from the date that the Company placed its originally requested rates into effect under bond.

Directive at 2.

Because the entire purpose for the expedited hearing in this matter was to allow a Commission decision prior to the December 31, 2017, expiration of the bonds, DIUC quickly complied with the Directive by filing a schedule with the Commission demonstrating that the rate design produces the revenue amount set forth by the Commission. *See* DMS Entry #273764, Letter with Schedules Submitted Pursuant to Commission Directive Dated December 20, 2017. The schedule was provided to all parties with correspondence explaining that “pursuant to the Directive at ¶4, DIUC asks the parties to verify the rates set forth in the Schedules are consistent with the provisions of the Directive. In order for January’s billings, the parties are requested to provide their confirmations via email to the undersigned **prior to Noon on December 29, 2017.**” *Id.* (emphasis in original).

Instead of responding to the substance of the schedule provided by DIUC, the POAs want DIUC to agree to indefinitely delay collection of 25% of its annual revenues. That is impossible. DIUC bills its customers only four times per year and the Utility’s cashflow issues have been examined at length in this proceeding. The POAs are unquestionably aware that DIUC cannot afford to delay an entire quarter’s billings; to suggest otherwise is to demand DIUC pretend as if it must not pay its creditors or its costs of operation. Once again, the POAs seem unwilling to recognize the real-world facts that DIUC must address. The Utility cannot just suspend its billing.

DIUC is also obligated to comply with Commission Orders 2016-156 and 2017-402(A) as well as the recent Directive mandating that DIUC issue refunds along with 12% interest. To comply, DIUC calculated then refunded each customer “the difference between the amount allowed by [the Directive] and the full amount originally requested by the Company, along with 12% interest.” Those amounts were then included in the Fourth Quarter 2017 billings which DIUC mailed to its customers in compliance with the Order.

Then, on January 5, 2018, the POAs submitted their Letter asserting DIUC should not have issued the required refunds to its customers but that DIUC should have, instead, delayed issuance of these refunds until some as of yet unidentified time later in 2018. The POAs complain that DIUC should wait for the Commission’s full written order in this matter then allow sufficient time for “DIUC, the POAs, and ORS to attempt to reach an agreement on how DIUC would proceed” with regard to issuing the directed refunds. POAs’ Letter at 2.

DIUC has already been forced to spend significant resources responding to the POAs’ inquiries about and claims that the bonds in place were insufficient to address even the period prior to December 31, 2017. DIUC then pressed the Commission to schedule a hearing that would allow a decision before December 31, 2017. The POAs vigorously objected to that schedule and demanded, instead, that DIUC simply spend more money on additional bonds. DIUC explained it could not obtain more bonds. The Hearing Officer specifically found that a decision prior to the end of 2017 was necessary due to “the difficulties of [DIUC] continuing its appeal bond after the end of 2017, and various financial consequences associated with that effort.” *See* Order 2017-61-H, DMS Entry #272829 (emphasis added).

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Pursuant to the Hearing Officer's ruling, a Commission hearing was scheduled to allow a decision prior to December 31, 2017. The Commission held the hearing and issued its Directive on December 20, 2017. DIUC then worked quickly and in good faith to comply with the Directive and the previous Orders of the Commission related to the bonds in place up to December 31, 2017. DIUC has acted lawfully and properly.

The claims raised by the POAs' Letter are unfounded and without merit. Accordingly, the Commission should disregard it.

Sincerely,

/s/

Thomas P. Gressette, Jr.

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